IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 565/2001
(Old No. 2979/1981)

Ram Swarup Bhatia S/o Shyam Lal Bhatia
R/o Wing No. 3, Barrack No. 10/7,
Prem Nagar, Dehradun ....Plaintiff-Appellant.

Vs.

Union of India New Delhi,
Through the President Forest Research
Institute & College, Dehradun,
(service to be effected through
the Secretary, Ministry of Agriculture,
New Delhi) ....Defendant-respondent.

Sri N.C. Gupta, learned counsel for the appellant.
Smt. Anjali Bhargava, learned Standing Counsel for the respondent.

Hon'ble B.C. Kandpal, J.

This Second Appeal, U/S 100 of the C.P.C., has been preferred against the judgment and order dated 26-8-1981, passed by the Additional District Judge, Dehradun, whereby the appeal filed by the plaintiff/appellant was dismissed and the appeal of the Union of India was allowed.

2- Brief facts giving rise to the present appeal are that the plaintiff/appellant Ram Swarup was appointed as a Lower Division Clerk in the Forest Research Institute on 29-3-1961. He served the different branches of the Institute. From February 1971 to November 1972 he served in the Forest Hospital and during this period he was posted in Wood Preservation Branch. An order for medicines worth Rs. 1469=80 Paise was placed by Stores Officer with M/S Martin and Harris, Lucknow on 6-6-1972. A bill for the medicines was received by Stores Officer who sent it to the hospital in July 1082. On 11-8-1972 the plaintiff/appellant brought the fact to the notice of the Medical Officer Incharge that the consignment of medicines had not been received. On the

instructions of the Medical Officer, the plaintiff/appellant made enquiries from stores, records and other sections and he was informed that the consignment had not been received. He accordingly reported the matter to Medical Officer on 16-8-1972. The Medical Officer himself inquired but with the same reply. The firm also asked the postal authorities to trace out the parcel. Another letter was sent to the concerned firm on 19-9-72 but did not get any response. On 3-10-1972 the Store Section informed the Medical Officer that the parcel had been received in the Central Office on 17-6-1972 and sent it to the Hospital. Two entries regarding the delivery of parcel in the Record Section were shown made under the signatures of the plaintiff/appellant. The Medical Officer asked the plaintiff to search out the parcel within a week and to report as to the result of the search. The Registrar of the Forest Research Institute also sought information from the plaintiff about the certain parcels dated 17-6-1972. The plaintiff sent his reply on 7-11-1972. A charge sheet dated 7-12-72 under the signatures of Registrar was served on the plaintiff. Thereafter, inquiry was conducted by the Deputy Registrar against the plaintiff. After completion of the inquiry against the plaintiff the disciplinary authority, i.e. the President of the Institute vide his order dated 28-6-1974 imposed penalty on the plaintiff of reduction of pay by four lower stages in the time scale of pay of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400 (From Rs. 342/- to Rs. 314/-) from the date of issue of the order for six years which will have the effect of postponing his future increments. He will not earn increments of pay during the period of reduction. Further recovery of Rs. 1469-80P. from the salary of the plaintiff in instalment of Rs. 60/-per month was also ordered.

3- The plaintiff instituted the suit before the Civil Judge, Dehradun challenging the impugned punishment order mainly on the ground that without holding preliminary enquiry, charge sheet was served upon him, hence the charge sheet was illegal and against the Rules; that the President of the Institute is the appointing authority of the plaintiff hence only he could issue charge sheet against him and the Registrar is not a competent authority in this behalf; that the Deputy Registrar of the Institute was not authorized to hold the enquiry; that the Deputy Registrar was under the influence of the Registrar and he had not acted impartially; that he was not afforded opportunity to cross-examine the witnesses during enquiry; that the punishment awarded is too excessive and that the double punishments should not have been awarded against him.

4- The defendant-respondent contested the suit by filing its W.S. It was alleged that the order was placed for medicines by Stores Officer on 6-6-72 and the bill for the same was received on 7.7.72. The plaintiff reported to the Medical Officer about the pendency of the bill on account of non-receipt of the parcel. The plaintiff was asked to find out the parcel. On 16.8.82 the plaintiff told that no such parcel had been received. The supplying firm also made enquiries from the postal department and it was informed that the parcel was delivered on 17-6-1972 which was received by the plaintiff and made his signatures for the receipt of the parcel. It was also alleged that no preliminary enquiry was necessary. The Registrar was the disciplinary authority for the plaintiff and was empowered to issue the charge sheet. The Deputy Registrar did not act in a partial manner. The plaintiff was given opportunity to defend his case during the inquiry. It was also alleged that the punishment is not excessive or double.

5- The trial court framed the following issues on the basis of pleadings of parties:-

1- Whether enquiry against the plaintiff was bad for want of a preliminary enquiry as pleaded in Para 13 of the plaint?.
2- Whether the charge sheet against the plaintiff was illegal void and without jurisdiction and has not been issued by a proper person as alleged in para-15 of the plaint?.
3- Whether the enquiry against the plaintiff is illegal and void for the reasons alleged in the plaint?.
4- Whether the enquiry and charge sheet were without jurisdiction against law and malafide?.
5- Whether the plaintiff was not given reasonable opportunity to be heard as pleaded in para 23 of the plaint?
6- Whether the punishment awarded is illegal?.
7- Whether the punishment is bad as alleged para 25 and 27 of the plaint?.
8- Whether the salary of the plaintiff has been fixed at reduced scale? If so, its effect?.
9- Whether the suit is not justifiable?.
10- Whether the notice U/S 80 C.P.C. is invalid?.
11- Whether the court has no jurisdiction to decide the controversy?
12- Whether the suit is not maintainable?.
13- To what relief, if any, is the plaintiff entitled?.

6- Thereafter parties led evidence in support of their case.

7- The trial Court on appreciation of evidence on record, decreed the suit of the plaintiff/appellant and declared the punishment awarded vide letter dated 28-10-1974 illegal. The trial court also observed that the defendant may award fresh punishment to the plaintiff in accordance with law, on the basis of the same enquiry, which is legal. The defendant was also directed to restore the pay of the plaintiff at the rate at which he was being paid on 1-6-1974. The recovery was also stopped from making any recovery till the punishment is made in accordance with law. It was also directed to return Rs. 433.80 to plaintiff till then.

8- Being aggrieved by the judgment and decree of the trial court the plaintiff as well as the department filed appeals before the court below. The appellate court vide impugned judgment and order dated 26-8-81 dismissed the appeal of the plaintiff while the appeal of the department was allowed and judgment and decree of the trial court was set aside and the suit of the plaintiff was dismissed.

9- Thereafter, the plaintiff has filed this second appeal before the Allahabad High Court, against the impugned judgment and order dated 26-8-1981, which was transferred to this court after creation of new State.

10- Heard learned counsel for the parties and perused the record.

11. At the time of admission of the second appeal the Court was of the view that following substantial question of law arise in this appeal for consideration:

1. Because the authority to impose the penalty under rule 12 of the Central Civil Services

(Classification Control and Appeal) Rules is vested with the authority specified in this behalf by general or special order of the President or where no such authority has been made, by the appointing authority or the authority specified in this Schedule in this behalf. It is the admitted case of the parties that the Registrar has been empowered to impose penalty. Consequently, the President could not hold back the power to impose penalty under Rule 12 when he had specified the power by means of a special order in favour of the Registrar.

2. Because the assistance of a lawyer in the conduct of an enquiry is a necessary fundamental right of a Government servant in the matter of decision of enquiry and the principles as laid down in the case of Husainara Vs State of Bihar, Harkauli Vs State of Maharashtra as also in the case of Khatri Vs State of Bihar are fully applicable.

12- As far as first substantial question of law is concerned, the record reveals that Rule 14 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, it provides that whenever the Disciplinary Authority is of the opinion that there are grounds for enquiring into the truth of any imputation of any misconduct or misbehavior against the Government Servant, it may enquire into and appoint an authority of enquire into the truth thereof.

13- Having considered the aforesaid provision, the legal requirement in the provision is forming of opinion by the

Disciplinary Authority of there being grounds requiring an enquiry and this opinion is subjective.

14- It is not disputed that Registrar, before initiating the enquiry required the plaintiff/appellant to explain certain facts pertaining to the case by his memorandum. The memorandum was based upon a letter sent by the Medical Officer-in-charge of the New Forest Hospital which paper No. 45A/122. The plaintiff/appellant set out in detail a reply to the memorandum which is available as Paper No. 45/119 of the record. Therefore, this all goes to show that some enquiry was conducted by the Registrar before initiating the proceedings against the plaintiff/appellant and serving him chargesheet.

15- Even on the facts, the courts below have held that an enquiry was conducted by the Registrar and this conclusion on the factual aspect recorded by both the courts below cannot be interfered with at the stage of second appeal. The enquiry is thus not illegal because of the absence of preliminary enquiry. Nothing special has come out on the record by which it my be suggested that the enquiry officer was biased against the plaintiff/appellant.

16- Further Rule 14 of the of the Central Civil Services (Classification, Control and Appeal) Rules provides that the Disciplinary Authorities is empowered to appoint an authority to enquire into the truth of the imputation. The Registrar was designated as appointment authority by virtue of the notification issued on 30th November, 1965. Therefore, the Registrar by appointing Deputy Registrar to conduct the enquiry, acted within the power conferred on him by these Rules.

17- Sub-rule 4 of Rule 14 requires the Disciplinary Authority to deliver the charge to the Government Servant requiring him to file written statement and to say whether he desires to be heard in person. The documents available on the record show that the Disciplinary Authority is empowered to appoint an enquiring authority after the written statement had been received.

18- Learned counsel for the appellant has further argued that the finding of the lower appellate court with regard to this aspect that more than one punishment could be imposed, is erroneous. In order to consider this argument the evidence on record is to be assessed and it reveals from the record that the plaintiff/appellant in the instant case was found guilty of misappropriation and two penalties were imposed against him. The first was reduction of his pay by four lower stages and postponing his future increment and second was recovery of Rs. 1,469.80 paisa from his salary. In this context Rule 55-B (a) of the Civil Services (Classification, Control and Appeal) Rules, 1930 would be relevant to examine which runs as follows:-

> *"55-B a) Whenever the punishing authority is satisfied that good and sufficient reasons exist for adopting such a course it may impose the penalty of-*
>
> *i. censure, or*
>
> *ii. stoppage at an efficiency bar.*
>
> *Provided that it shall not be necessary to frame formal charges against Government Servant concerned or to call for his explanation."*

19- It would be important to mention here that in enumerating the penalties the word "or" has been used between the penalties given necessarily leading to the conclusion that either of the two could be imposed for good and sufficient reasons. The plaintiff/appellant is governed not by U.P. Civil Services Rules of which Rule 58-B is a part but by Central Services Rules (Classification, Control and Appeal) Rules and these rules provided for penalties in Rule 11. According to this rule the following penalties may, for good and sufficient reasons and as hereinafter provide, he imposed on a Government Servant, namely:-

"MINOR PENALTIES:-

i) Censure

ii) Withholding of his promotion

iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or both of orders;

iv) Withholding of increments of pay;

MAJOR PENALTIES

V) reduction to a lower stage in the time-scale of pay for a specific period, with further directions as to whether or not the Government will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay;"

20- The ruling of these two above rules indicates that firstly the word "penalties" is used in Central Rules as against the penalty in the State Rules and he word "or" does not occur between various penalties enumerated. Interpretation of Rule 58-B of the U.P. Civil Services Rules cannot guide the

interpretation of the Central Rules. The lower appellate court has rightly noticed the differences between the two Rules.

21- The trial court could not notice the differences between the two rules while observing that in the instant case the Government chose to impose both the punishment for the same misconduct contrary to the provision of Rule 55-B. The view adopted by the trial court can safely be said to be erroneous.

22- As far as second substantial question of law is concerned, the record further shows that it is the case of the plaintiff/appellant that the enquiry officer refused him to be assisted by a lawyer but permitted him to take official assistance. In order to consider this aspect the evidence on the record is to be assessed again and the record reveals that during the enquiry, the plaintiff/appellant applied for appellant of one Chandra Bhan - U.D.C. to represent him as defence counsel, vide paper By 45A/98 and said Chandra Bhan moved an application for permitting him to act on behalf of the plaintiff/appellant. He was also permitted to do so as is evident from the order passed by the Registrar on 25.01.1973. No evidence is available on record which may indicate that on any point of time the plaintiff/appellant wanted a lawyer to be pointed to assisted him and requested the enquiry officer in this regard. Engagement of a lawyer in an enquiry proceeding is required by Rule 14(1) of the Central Civil Services (Classification, Control and Appeal) Rules. A lawyer can be engaged when the Presenting Officer is a legal practitioner or when the enquiry officer having regard the circumstances of the case so permits.

23- In the instant case, the Presenting Officer was not a legal practitioner as such no right accrued to the plaintiff/appellant to engage a legal practitioner. A legal practitioner is normally permitted only when the case involves intricate question of law and facts. In the instant case, only question involved was whether the plaintiff/appellant had received a parcel of medicines and if so whether he had misappropriated it or accounted for it.

24- The record shows that at the time of the enquiry, the plaintiff/appellant had already served for more than 12 years and he was quite experienced person, no witness was also produced by the Presenting Officer hence, the plaintiff/appellant was also not required to cross examine any witness. Therefore, in such circumstances, the plaintiff/appellant did not need the help of a legal practitioner.

25- No other substantial point of law is involved in this case. Both the courts below have recorded concurrent findings of fact which cannot be disturbed at the stage of second appeal.

26- The second appeal lacks merit and is liable to be dismissed.

27- Accordingly, the second appeal is dismissed.

(B.C. Kandpal, J.)

September 28, 2006
ASWAL